IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b)

Description of Case

Civil Revision No. 44 of 2006

Date of decision:-19-7-2006

A.F.R. (Approved for Reporting)

~~Not approved for reporting~~

Date:-19-7-2006 Initials of Judge

Note:- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

HIGH COURT OF UTTARANCHAL, AT NAINITAL

Civil Revision No.44 of 2006

Ram Avtaar S/o late Hukum Chand
R/o House No.53 Old Tehsil Roorkee
Pargana & Tehsil Roorkee
District Haridwar ...Revisionist

Versus

Smt. Gyan Prabha Singhal
W/o Sri Vinod Kumar Singhal
R/o 423 Old Tehsil Roorkee
Pargana & Tehsil Roorkee
District Haridwar
.....Respondent

Sri Sharad Sharma learned counsel for the revisionist.
Sri Lok Pal Singh learned counsel for the respondent.

Hon'ble J. C. S. Rawat, J.

1. This civil revision under section 25 of Provincial Small Causes Courts Act has been filed against the order dated 18.04.2006 by virtue of which the Court of Addl. District Judge/Ist FTC Roorkee, District Haridwar has rejected the revisionist's application paper no.17-Ga and had invoked Order 15 Rule 5 Striking off the defence of the revisionist-Ram Avtaar(tenant).

2. Brief facts of the case are that a S.C.C. suit was filed on 26.04.2005 by Smt. Gyan Prabha Singhal-plaintiff (hereinafter referred as 'respondent') against the tenant-Ram Avtaar(hereinafter referred as 'revisionist') for recovery of arrears of rent and ejectment of the premises. Thereafter, the summons was issued and served on the defendant-revisionist on 31.06.2005 and the date was fixed for the written statement in the said summons on

01.07.2005. The revisionist appeared on 01.07.2006, but there was a strike of the lawyers and the case was fixed for 08.07.2005. On 08.07.2005 the defendant-revisionist filed and application paper No.17Ga before the trial court alleging therein that admittedly the rent of the disputed premises was Rs.50/- per month and he had to pay only Rs.100/- for the remaining period of occupation and he remitted the rent of Rs.100/- by way of money order, but the respondent-Smt. Gyan Prabha Singhal plaintiff declined to receive the same and the money order was returned. The revisionist-tenant moved an application before the trial court with the prayer that he is ready to pay the arrear of rent to the landlord(plaintiff). It was further prayed that if the landlord did not accept the same, the tenant might be permitted to deposit the arrears of rent in the court. There was no representation on behalf of the plaintiff-respondent to strike off the defence of the defendant.

3. After hearing the parties, the trial court came to the conclusion that the revisionist-tenant had not deposited the entire amount alongwith 9% interest and as such the trial court invoked the Order 15 Rule 5 striking off the defence of the revisionist (tenant). Feeling aggrieved by this, the present civil revision has been preferred before this Court.

4. It was contended on behalf of the revisionist-tenant that the trial court had failed to take into consideration the provisions contained under sub-rule 2 of Order 15 Rule 5 CPC. The application of the

revisionist was a representation within the purview of sub-section (2) and it ought to have been decided by the court. It was further contended that the intention of the revisionist was to deposit the admitted rent due on him and he made a representation before the court below to seeks permission if the plaintiff-respondent was ready to accept the amount he would pay the said amount to the respondent. If the respondent-plaintiff was not ready, the defendant-revisionist might be permitted to deposit the amount in the court. It is admitted to both the parties that 01.07.2005 was fixed for the written statements and it was not the date to frame the issue. The written statement was filed on 16.07.2005 by the defendant alleging therein that he has also deposited the entire amount, though the said receipt is not on record. Learned counsel for the defendant-reveals had filed the receipts of the deposited, which reveals that he had deposited the entire amount till 06.05.2005. The purpose of introducing Order 15 Rule 5 C.P.C. was to only compel the tenant to deposit the admitted rent and to continue the admitted rent in future so that the tenant may not be at liberty not to deposit the rent during the trial and the plaintiff would not be deprived of the rent. Keeping In view of this, the said amendment was introduced. It gives the discretion to the court that if the tenant is the bonafide then the court should apply the discretion in favour of the tenant. It is also well settled position of law that the court should have liberal while

interpreting the provisions of Order 15 Rule 5 C.P.C. It is not disputed that the issues have not been framed in this case. The date was fixed only for framing of issues. However, no issues were framed and the court had to apply its mind on the date of 08.07.2005. It has been held in **Ved Prakash Wadhwa Vs. Vishwa Mohan 1981 (3) SCC 667, Sham Lal Vs. Atme Nand Jain Sabha 1987(1) SCC 222, Siraj Ahmad Siddiqui Vs. Prem Nath Kapoor 1993(4) SCC 406** that the date of first hearing as defined in the Act is the date on which the court proposes to apply its mind to determine the points in controversy between the parties to the suit and to frame issues, if necessary. The words 'first day of hearing' as meaning not the day for the return of the summons or the returnable day, but the day on which the court applies its mind to the case which ordinarily would be at the time when either the issues are framed or evidence taken. In the present case, the case was fixed for written statement on 01.07.2006 and then it was fixed for framing of issues, but the case was not taken for issues and only a representation as provided under Order 15 Rule 5 Explanation 2 was taken and the defence was struck off by the court below. It is also pertinent to mention here that the representation itself indicates that the revisionist was ready to pay the amount of rent in the court itself. The revisionist has requested the court below that he might be permitted to deposit the rent in the court. It was the duty of the court to direct the revisionist to

deposit the amount. It has been held in **Sham Lal** (supra) that the Punjab & Haryana High Court itself in Mangat Rai Vs. Ved Prakash (AIR 1964 Guj. 9, 20) has expressed the same view in para 15 of the judgment:-

> "*The principles that can be deducted from the plethora of case law on the point, including the authorities referred to above, are consistent with the literal meaning of word 'hearing' which is its dictionary sense means 'the listening of evidence and pleading in court of law, the trial of a cause'. It seems to be abundantly clear that in order to constitute 'first hearing' within the meaning of section 13(2)(i) proviso, the following prerequisites must co-exist.:*
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> *(i) There should be a 'hearing' which presupposes the existence of an occasion enabling the parties to be heard and the court to hear them in respect of the cause.*
>
> *(ii) Such hearing should be the first in point of time after due service of the summons / notice on the tenant.*

5. In Sham Lal (Supra), the Rent Controller after hearing the parties found that the tenant having failed to tender the arrears of rent and interest at 6% p.a. on the arrears together with the costs of the

application on 26th June 1969 which according to him was the first hearing of the application for ejectment, the tenant was not entitled to get the protection of section 13(2)(i) proviso. The Rent Controller allowed the application for ejectement. An appeal was filed before the appellate authority against the order of the Rent Controller. The appellate authority reversed the order of the Rent Controller by holding that the tenant cannot be penalized for the mistake of the court and the deposit has been made by the tenant on the next date i.e. 02.07.1969 when the cost of the application was assessed by the Rent Controller, should be treated as deposit made in accordance with the provision of section 13 of the act. It has been further held that for the mistake of the court or its officers nobody could be made to suffer. A revision was preferred against the judgment & order of the appellate authority before the High Court. The High Court allowed the revision by holding that the day of first hearing was 26, June 1969 when the tenant appeared before the Rent Controller with his counsel and sought time for filing written statement. The tenant was directed to vacate the premises and to deposit the arrears of rent. The Hon'ble Supreme Court restored the order of the first appellate authority setting aside the order of the High Court.

6. It was submitted by the learned counsel for the revisionist-tenant that since the date mentioned in the summons was not the date for hearing of the parties in the suit, the period specified for deposit of

rent under the Order 15 Rule 5 CPC could not be reckoned from that date. Reliance is placed on the decisions of the Hon'ble Supreme Court in Sham Lal (supra).

7. Considering the fact and circumstances of the case, the judgment passed in Sham Lal (supra) is applicable in the instant case. It is revealed that the tenant-revisionist was depositing the amount of rent as has been mentioned in the supplementary affidavit filed before this Court. The trial court should have allowed the representation made by the tenant-revisionist and after calculating the amount the revisionist should have been directed to deposit the amount in case the plaintiff was not agreed to take the said money. There is no application of the plaintiff to strike the defence. The court had no occasion to strike the defence. In view of the foregoing discussion, I find that the trial court had exercised its jurisdiction erringly. Therefore, the revision is allowed. The impugned order dated 18.04.2006 passed by Addl. District Judge, Haridwar in S.C.C. Suit No.04/2005 is hereby set aside. The case is remitted to the trial court for proceeding with the suit in accordance with law.

(J.C.S. Rawat, J.)

Dated 19.07.2006

LSR